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RACISM, RACIAL DISCRIMINATION, XENOPHOBIA AND ALL FORMS OF DISCRIMINATION

Written statement*/ submitted by the International Indian Treaty Council, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[11 January 2001]

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*/ This written statement is issued, unedited, as received from the submitting non-governmental organization(s).

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The International Indian Treaty Council welcomed the Third World Conference Against Racism from the day it was announced. In preparation for this international examination of the historically persistent and deadly scourge of racism upon humanity and particularly Indigenous Peoples, we have attended many preparatory meetings, including the Regional Conference of the Americas, held in Santiago, Chile in November of last year.

Lamenting that the important findings of the two Previous World Conference to Combat Racism with regard to Indigenous Peoples had virtually been ignored, our delegations attended these preparatory meetings with the hope that the international community would address the racism directed against Indigenous Peoples in a principled manner. Lamentably, again, some member States remain purposefully blind to the Indigenous human rights and fundamental freedoms grossly annulled or impaired by racism.

Although, as of this writing, the final Declaration and Programme of Action for the America's Regional Prepcom are not finalized, in our presence the drafting committee, despite strong support by most American States, qualified the use of the word "Peoples" with regard to Indigenous Peoples, as not having the significance that normally inures to the word under international law.

To avoid the use of the word in its full significance, in the context of racism and the definition of racial discrimination found in the Convention for the Elimination of all Forms of Racial Discrimination, is unprincipled. It is a distinction based on race or ethnicity that effectively annuls and impairs the rights of Indigenous Peoples. It is in itself an act of racial discrimination. Although it could be argued that the CERD Convention does not apply to this Commission as the Commission is not a signatory to its own conventions, it does apply to the States parties to the Convention who insist on the qualification. They practice their racial discrimination in the very halls of the United Nations. They nullify and impair our rights within the Commission on Human Rights.

We are not alone in this conclusion. Similar views have been expressed on numerous occasions by numerous Indigenous delegations to this Commission and to the Intersessional Working Group on the proposed UN Declaration on the Rights of Indigenous Peoples. United Nations Experts, including Mme Daes, the excellent Chairwoman of the WGIP have also expressed this view:

> "Indeed, I believe that discrimination and racism are at the heart of the indigenous issue, whether this is expressed in the reluctance of many States to recognize the right of self-determination of indigenous peoples - a right recognized all other peoples, or whether it is expressed in the absurd denial of the use of the term "indigenous peoples" contradicting all logic of language and pretending in so doing that the different indigenous peoples of the world do not have a language, history and culture unique them, or whether it is the persistence in the dominant world that indigenous peoples do no have their own long established and dynamic system of knowledge and law."[1]

We understand that some have characterized the use of the term "indigenous peoples" in the final draft of the Americas Regional Prepcom Declaration and Programme of Action as great progress. But in the view of our delegation, to qualify the word as having no significance under international law is tantamount to not using the term at all. It is a retrogression of all that many Member States and Indigenous Peoples have accomplished within this Commission for the past 30 years. The qualification of the term "Peoples" with reference to Indigenous Peoples nullifies and impairs the collective human rights and fundamental freedoms already recognized under international law and practice as collective rights of Indigenous Peoples.

The International Indian Treaty Council calls the Commission's attention to the Concluding observations of the Human Rights Committee on the Government of Canada's fourth periodic report on its observance of the International Covenant on Civil and Political Rights (ICCPR).[2]

As the treaty monitoring body of the ICCPR, the Human Rights Committee, as an area of concern, examined the application of the right of self determination to Indigenous Peoples in Canada. Pointedly, the Committee, upon examination of Canada's compliance with the ICCPR with regard to Indigenous Peoples, urged the Canadian government to "report adequately on the implementation of article 1 of the Covenant in its next periodic report."

Noting that the situation of Indigenous Peoples remained the "most pressing human rights issue facing Canadians," the Human Rights Committee emphasized in its Concluding Observations, "..that the right of self determination requires, *inter alia*, that all peoples must be able to freely dispose of their natural wealth, and that they may not be deprived of their means of subsistence," These are the obligations of States under Article 1 of the Covenant with regard to peoples.

The first World Conference to Combat Racism used the term "peoples" with relation to indigenous peoples, without any qualification.[3] The second World Conference described the rights of indigenous populations, including: their right to maintain their traditional economic, social and cultural rights, to pursue their own economic, social and cultural development, and to use and further their own language.[4] Both World Conferences recognized indigenous peoples' special relationship with the land and its natural resources and that they should not be taken from Indigenous Peoples.

Further, the Committee on the Elimination of Racial Discrimination (CERD Committee) uses the term "indigenous peoples" without any qualification. This Treaty Monitoring Body of the CERD Convention also recognizes important collective rights of indigenous peoples in its general recommendation XXIII:[5]

> "3. The Committee is conscious of the fact that in many regions of the world indigenous peoples have been, and are still being deprived of their human rights and fundamental freedoms and in particular that they have lost their lands and resources to colonialists, commercial companies and State enterprises. Consequently, the preservation of their cultures and their historical identity has and still is being jeopardized." and,

"5. The Committee especially calls upon States parties to recognize and protect the rights of indigenous peoples to own, develop, control and use their communal lands, territories and resources and, where they have been deprived of their lands and territories traditionally owned or otherwise inhabited or used without their free and informed consent, to take steps to return those lands and territories."

The CERD Committee has applied these standards and Article 5(c) of the CERD Convention to Australian legislation facilitating the loss of native title by Australia's indigenous peoples.[6]

The recognition extended by previous World Conferences, the Human Rights Committee and the CERD Committee to indigenous rights as peoples' rights are consistent with numerous United Nations studies, including the monumental Cobo Study, Rapporteur Mme. Daes' report on indigenous peoples and their relationship to land, as well as Special Rapporteur Miguel Alfonso Martinez' report on Treaties, agreements and other constructive arrangements between indigenous peoples and states. Limitations on written interventions by NGOs keep us from adequately describing their findings, or the recognition of the collective rights of Indigenous Peoples found in other international standards such as ILO Convention No. 169.

To qualify the term "indigenous peoples" as not having the significance normally attributed to it under international law, impairs if not nullifies all of these internationally recognized collective rights of Indigenous Peoples.

We have been told that in the case of one of the two American States insisting on the qualification, that they do not have a problem in extending recognition of the rights of peoples to Indigenous Peoples. This State claims to already recognize the right of self-determination of the Indigenous Peoples within its borders, but claims that it is concerned that such recognition might lead to the break up of other States.

The break up of States and the genocide as found in Rwanda, and Ex-Yugoslavia, as well as other such violent and truly tragic situations were not caused by the recognition of human rights. They were caused by the failure of recognition and respect for human rights. The recognition of human rights has never led to violence or national distress. Human Rights are no threat to democracy.

Our delegation is aware that the qualifying language of the America's Regional Prepcom with reference to the significance of the term "indigenous peoples" also contains a reference to the multi-national negotiations being conducted on the UN and OAS draft declarations on the rights of indigenous peoples. The first two World Conferences, United Nations Treaty Monitoring Bodies, United Nations Experts, and Indigenous Peoples have not waited for these multi-lateral negotiations to recognize the indigenous rights that are annulled or impaired by acts of racial discrimination directed against Indigenous Peoples. They rely on an established and growing body of international law.